

A P P E A R A N C E S

REPRESENTING THE PLAINTIFF:

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REPRESENTING THE DEFENDANTS:

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ALSO PRESENT:

Dean Christensen  
Don Wiegand

I N D E X

Witness:

Page

E. WYNN JOHN

Examination by Mr. Thorne

04

E X H I B I T S

No.

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(Brief recess taken.)

THE WITNESS: I made a mistake right here. At this point right here that goes into a pipe, a twelve inch pipe. Comes out right here.

Q (BY MR. THORNE): Okay. You've marked with red ink on Exhibit 4 the course of the ditch; is that correct?

A Yes.

Q You've indicated where a twelve inch pipe is. Would you put an arrow or something out there so you can identify that location.

(Time lapse.)

Q (BY MR. THORNE): And where does the pipe terminate?

A Right there. Right at the base of that.

Q Other than that one pipe section, is all the rest open ditch?

A Yes.

Q And what is the width of the ditch?

A Anywhere from three feet to sixteen. (no where on ditch No 1)

Q ~~Sixteen foot wide ditch?~~

A Yes, which has been caused by--from this point here--by pigs routing in the ditch ~~the last four or five years~~

(pigs bought in Spring 1985)

Q So historically you don't think it was that wide?

A No, it wasn't because I cut grain off of this for

1 ten years.

2 Q What years did you cut grain off the ditch?

3 A From 1946 until about 1957.

4 Q And how wide was it then?

5 A I could drive across it with my combine.

6 Q What do you mean drive across?

7 A You didn't have to have a culvert. You could go  
8 across--- There are four different points from here to  
9 here that I could cross it with ease, no problems.

10 Q There were dips in the ditch you could--

11 A Just a hard panel in the bottom of the ditch you  
12 could drive through.

13 Q In regards to your use of the right-of-way, do  
14 you claim the right to drive a motor vehicle up the ditch  
15 or by the ditch?

16 A If it's required to clean the ditch, yes.

17 Q ~~Tell me how many~~ times motor vehicles have been  
18 ~~taken up the ditch?~~

19 A ~~Maybe once or twice a year.~~

20 Q ~~When, which years?~~ Every year?

21 A No, not every year. But we have walked through  
22 there. We've also taken a horse and sometimes a team to  
23 drag through that ditch.

24 Q That's what I want to know then, what use you  
25 have made that you claim the right-of-way with. Initially

*(Never seen  
creech on ranch)*

1 you took horses and drug ditches through it.

2 A Yes.

3 Q And from what years was that done?

4 A From 1900 until maybe the last ten years.

5 Q When have you taken motorized vehicles up the  
6 ditch?

7 A We took-- This year we took one, and we put a  
8 culvert in at this point.

9 Q Is that on the Christensen property?

10 A It's on the county property, across the county  
11 road.

12 Q I'm really just concerned, I guess, with the  
13 Christensen property.

14 A And another point up here where we have a small  
15 storage tank or area, we've had as high as D-8 tractors in  
16 there with carry-alls on back of them.

17 Q Was that on the Christensen property?

18 A Yes, it was. We own it now.

19 Q You traveled up the county road and then put your  
20 heavy equipment up by the spring area; is that what you're  
21 talking about?

22 A At this point right here is where the mouth of  
23 Limekiln is where we have had heavy equipment before.

24 Q And that is on county property or your property?

25 A It's on our property is where we used it.

1 Your answer is you don't know, but you understand that the  
2 bylaws say--

3 A ~~The bylaws hold me personally responsible for~~  
4 ~~suits if I permit that water to be diverted above that~~  
5 ~~point.~~

6 Q Can you tell me why that is?

7 A Yes. The Hall brothers diverted it here, and  
8 they diverted it here. And the water did not get back  
9 here for the next people to use. And as a result the  
10 Board of Directors were faced with lawsuits. And they  
11 finally agreed that it would not be diverted above this  
12 point rather than have suits with the people down here  
13 that were not getting the water back.

14 And because of the type of ditch and the soil, there's  
15 no way where it is an open ditch that they can guarantee  
16 that say Mr. Dorius here has a water turn at 2:00 that  
17 that water will be there for him to turn it at 2:00. And  
18 he uses his entire water turn for him to get it back down  
19 there. Can you see what I mean?

20 Q Well, I guess I want you to explain what you  
21 understand. So you understand the reason for the bylaw  
22 was that sometime in the past the Halls had diverted the  
23 water which then made it difficult for subsequent users to  
24 get it on time.

25 A That's correct.

1 Q And can you tell me when that bylaw was made?

2 ~~Before you were incorporated in 1902?~~

3 Q ~~Was that in 1902?~~

4 A I would have to bring you an exact copy, but I  
5 think it was in that period of time. I know there was one  
6 copy ~~in 1918~~. But you're asking-- Without giving me any  
7 information to come here by today, you're throwing me at a  
8 loss. You're strictly at memory, and my memory isn't a  
9 photostatic memory.

10 Q That's fine. None of ours is.

11 A I can furnish you what you want if you can give  
12 me a couple hours. I can bring them in here.

13 Q All right. Okay.

14 Now, after the hearing which was held on the  
15 preliminary injunction, did you ask your attorney to send  
16 a letter to Mr. Christensen informing him that he could no  
17 longer water out of the ditch or stock water out of the  
18 ditch?

19 A ~~In that we asked him to remove his pigs from the~~  
20 ~~ditch, so that they're not diverting the water, and I~~  
21 ~~think that was in the court summons, was it not?~~

22 (Off the record discussion.)

23 Q (BY MR. THORNE): Mr. John, do you recall  
24 receiving a letter signed by Dean Christensen dated about  
25 the 16th of June giving you notice that pursuant to state

1           A       As I recall it was-- His desire was over the  
2 drinking water and well that was to be drilled in that  
3 area.

4           Q       That was by Mr. Christensen or his company?

5           A       Now, you're asking me to be exact, and I was at a  
6 hearing where the city was in the protest, and I was  
7 protesting a well to be drilled there.

8           Q       Do you recall Mr. Wendell Hall testifying on that  
9 occasion?

10          A       Yes.

11          Q       And do you recall him stating that Halls had  
12 watered out of that ditch all summer long?

13          A       I don't.

14          Q       Do you recall him saying anything about stock  
15 watering out Portage Irrigation ditch?

16          A       Yes. He referred to it. When he said all summer  
17 long, he was referring to where their cattle range is in  
18 the summer because the ground ~~was not watered out of that ditch~~  
19 ~~was not watered out of that ditch~~, and it was not pastured during those--

20          Q       So your understanding of his statement was he was  
21 referring to specific locations he could get water, not  
22 anywhere through the ditch.

23          A       Right.

24          Q       Additionally, do you recall when you were present  
25 in court that another condition the court imposed to the